Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 10 APRIL 14, 1976 No. 15

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

(T.D. 76–94)

Customs Delegation Order No. 34 (Revision 2)

Delegation of Authority to Waive Claims for Erroneous Payments of Pay and Allowances to Employees

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 25, 1976.

1. By virtue of the authority vested in me as Commissioner of Customs by Treasury Department Order No. 214 (Revision 2), dated August 19, 1974 (39 FR 30509), I hereby delegate to the Assistant Commissioner, Office of Administration, insofar as employees in the Headquarters, U.S. Customs Service, are concerned, and to Regional Commissioners of Customs, insofar as employees in their regions are concerned, the authority of the Secretary of the Treasury under 5 U.S.C. 5584, and the regulations of the Comptroller General in 4 CFR Parts 91–93, 37 FR 26095, December 8, 1972, to waive in whole or in part erroneous payments of pay and allowances, other than travel and transportation expenses and relocation expenses, to Treasury employees aggregating not more than $500 in conformity with the limitations and standards set forth in the aforesaid provision of law and regulations.

2. Customs Delegation Order No. 34 (Revision 1), dated July 18, 1973 (T.D 73–202, 38 FR 19916) is hereby rescinded.

3. This order shall take effect upon publication in the FEDERAL REGISTER. (095386).

(ADM–9–03)

G. R. DICKERSON,
Acting Commissioner of Customs.

[Published in the FEDERAL REGISTER March 30, 1976 (41 FR 13380)]

(T.D. 76–95)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 18, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:	
March 8–12, 1976	$0.1990
Iran rial:	
March 8, 1976	$0.0142
March 9, 1976	.0142
March 10, 1976	.0142
March 11, 1976	.0142
March 12, 1976	.0140
Philippines peso:	
March 8, 1976	$0.1330
March 9, 1976	.1330
March 10, 1976	.1330
March 11, 1976	.1330
March 12, 1976	.1325
Singapore dollar:	
March 8, 1976	$0.4016
March 9, 1976	.4012
March 10, 1976	.4018
March 11, 1976	.4018
March 12, 1976	.4000
Thailand baht (tical):	
March 8–12, 1976	$0.0490

(LIQ-3-O:D:T)

JAMES D. COLEMAN,
Acting Director,
Duty Assessment Division.

(T.D. 79–96)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 18, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 76–30 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Italy lira:	
March 8, 1976	$0.001253
March 9, 1976	.001252
March 10, 1976	.001244
March 11, 1976	.001244
March 12, 1976	.001240
Spain peseta:	
March 8, 1976	$0.014985
March 9, 1976	.014950
March 10, 1976	.014975
March 11, 1976	.014930
March 12, 1976	.014930
Ireland pound:	
March 10, 1976	$1.9125
United Kingdom pound:	
March 10, 1976	$1.9125

(LIQ–3–O:D:T)

JAMES D. COLEMAN
Acting Director,
Duty Assessment Division.

[Published in the FEDERAL REGISTER March 30, 1976 (41 FR 13380)]

(T.D. 76-97)

Cotton textile products—Restriction on entry

Restriction on entry of cotton textile products manufactured or produced in India

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 29, 1976.

There is published below the directive of March 16, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, amending the level of restraint for cotton textile products in certain categories manufactured or produced in India. This directive amends, but does not cancel, that Committee's directive of October 1, 1975 (T.D. 75-272).

This directive was published in the FEDERAL REGISTER on March 19, 1976 (41 FR 11600), by the Committee.

(QUO-2-1)

JAMES D. COLEMAN,
Acting Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 16, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends, but does not cancel, the directive issued to you on October 1, 1975 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textiles and cotton textile products produced or manufactured in India.

The first paragraph of the directive of October 1, 1975 is amended, effective on March 16, 1976, to read as follows: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton Textile Agreement of August 6, 1974, between the Governments of the United States and India, and in accordance with the provisions of

Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on October 1, 1975 and for the twelve-month period extending through September 30, 1976, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in India, in excess of the indicated levels or restraint:

Category	*Twelve-Month Level of Restraint* [1]
28–38 and 64	10 million square yards equivalent
39–63	20 million square yards equivalent

The actions taken with respect to the Government of India and with respect to imports of cotton textiles and cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

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(T.D. 76–98)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles manufactured or produced in the Republic of Korea

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 29, 1976.

There is published below directive of March 16, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, amending the level of restraint

[1] The levels of restraint have not been adjusted to reflect any entries made after September 30, 1975.

for cotton textiles in category 18/19/26, manufactured or produced in the Republic of Korea. This directive amends, but does not cancel, that Committee's directive of September 25, 1975 (T.D. 75–255).

This directive was published in the FEDERAL REGISTER on March 19, 1976 (41 FR 11600), by the Committee.

(QUO–2–1)

JAMES D. COLEMAN,
Acting Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 16, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On September 25, 1975 the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning October 1, 1975 and extending through September 30, 1976 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraph 7(a)(i) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 26, 1975, between the Governments of the United States and the Republic of Korea, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-made Fiber Textile Agreement of June 26, 1975 between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint within Categories 1-38, part of 63 (shoe uppers), 64, 200-213, and 241-243 may be exceeded by 10 percent; within Categories 39-62, part of 63 (other than shoe uppers), and 214-240, by 7 percent; and within Categories 101-132, by 5 percent; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

directed to amend, effective on March 16, 1976, the level of restraint established for Category 18/19/26 (printcloth) to the following amount:

Category	*Amended Twelve-Month Level of Restraint* [2]
18/19/26 (printcloth)[3]	5,444,070 square yards

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool and man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

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(T.D. 76-99)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products manufactured or produced in India

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 29, 1976.

There is published below the directive of March 16, 1976, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning visa requirement

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[2] The level of restraint has not been adjusted to reflect any entries made after September 30, 1975.
[3] In Category 26 the T.S.U.S.A. Numbers for printcloth are:
320.—34 326.—34
321.—34 327.—34
322.—34 328.—34

and exempt and elephant-shaped certifications for cotton textiles and cotton textile products manufactured or produced in India. This directive amends, but does not cancel, that Committee's directive of May 13, 1975 (T.D. 75–137).

This directive was published in the FEDERAL REGISTER on March 22, 1976 (41 FR 11867), by the Committee.

(QUO–2–1)

JAMES D. COLEMAN,
Acting Director,
Duty Assessment Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

March 16, 1976.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends, but does not cancel, the directive issued to you on May 13, 1975 by the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of certain cotton textiles and cotton textile products, produced or manufactured in India for which the Government of India had not issued an export visa. It further directed that certain cotton textiles and cotton textile products would be exempt from established levels of restraint when properly certified by the Government of India.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to the Bilateral Cotton Textile Agreement of August 6, 1974, between the Governments of the United States and India, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to exempt from the levels of restraint established under the bilateral agreement shipments of handmade cottage industry products made from handloomed fabrics of the cottage industry and/or traditional Indian folklore products which are accompanied by a

rectangular certification. The certification will be a stamped marking in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used) and will include the signature and title of the official authorized to issue the certification; identify the items exempted; indicate the date the certification was signed and certified; and carry the certificate number. In the space marked "Description" on the certification stamp the certifying official will indicate that the shipment is either a "handmade cottage industry product of handloomed fabric of the cottage industry;" or will specify the name of a particular Indian traditional folklore product from among those on the list enclosed with the letter of May 13, 1975.

Shipments of cotton textile products made from handloomed fabrics of the cottage industry of India, but not wholly by hand, will be accompanied by a certification in the outline of an elephant which will appear on the front of the invoice (Special Customs Invoice Form 5515, successor document, or commercial invoice, when such form is used) and will include the signature and title of the official authorized to issue the certification; identify the items exempted; and indicate the certificate number and the date the certification was signed. These shipments are to be charged to a level of restraint of 2.9 million dozen during the twelve-month period which began on October 1, 1975. Facsimiles of both certifications are enclosed.

The foregoing certifications will be effective on April 1, 1976. Shipments certified or visaed in accordance with previously established procedures shall not be denied entry.

Invoices for shipments of cotton textiles and cotton textile products in Categories 1 through 64 will have either a visa stamp, as described in the directive of May 13, 1975, or an elephant stamp, as described in this directive, and will be subject to the respective quotas.

An invoice with a rectangualr or elephant-shaped stamp shall cover only merchandise represented by that stamp, as defined in this directive; otherwise all merchandise on that invoice will be denied entry. Export visas are not required for merchandise covered by invoices with a rectangular or elephant-shaped certification.

The actions taken with respect to the Government of India and with respect to imports of cotton textiles and cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions,

fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ALAN POLANSKY,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance U.S. Department of Commerce

FACSIMILES OF CERTIFICATIONS

GOVERNMENT OF INDIA

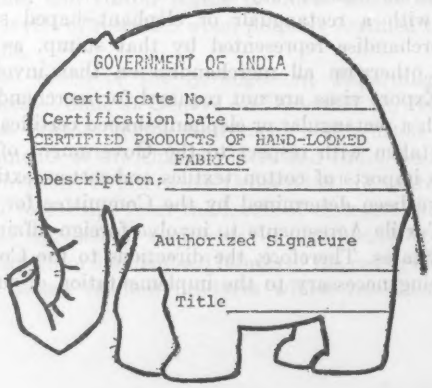
.....
Certificate No.
EXEMPTED ITEMS

.....
Description

.....19...
Certified on

.....
Authorized Signature

.....
Title



(T.D. 76-100)

Generalized System of Preferences

Generalized System of Preferences—Cost or value of materials produced in the beneficiary developing country

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 30, 1976.

Since the implementation of the Generalized System of Preferences (GSP) under Title V of the Trade Act of 1974 (Public Law 93-618, 88 Stat. 1978), hereinafter referred to as the "Trade Act", and the promulgation of sections 10.171-10.178 of the Customs Regulations (19 CFR 10.171-10.178) thereunder, a number of questions have been presented concerning what materials produced in the beneficiary developing country are to be included in the computation of the 35 percent criterion under Section 503 of the Trade Act. The following interpretations are being published in order to respond to those questions.

It is the position of the United States Customs Service that duty-free treatment under GSP will be accorded to an eligible article imported directly from a beneficiary developing country only if the sum of (1) the cost or value of the materials produced in the beneficiary developing country, as determined under the applicable law and Customs Regulations, plus (2) the direct costs of processing operations performed in such beneficiary developing country is not less than 35 percent of the value of the article as appraised in accordance with section 402 or 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). The 35 percent criterion can be satisfied entirely by the cost or value of materials produced in the beneficiary developing country, the direct costs of processing operations, or, any combination of the two.

Section 10.177 of the Customs Regulations interprets the words "materials produced in the beneficiary developing country" as used in section 503(b)(2)(A)(i) of the Trade Act to include only constituent materials of which the eligible article is composed which are substantially transformed in the beneficiary developing country into new and different materials or articles of commerce, or which are wholly the growth, product or manufacture of the beneficiary developing country. Therefore, to be included as part of the 35 percent criterion a constituent element of the eligible article which is not wholly the growth, product, or manufacture of the beneficiary developing country must have undergone a substantial transformation

in the beneficiary developing country. That substantial transformation must result in a new material or article which is used in producing the eligible article which is exported directly to the United States. Such materials or articles which qualify for inclusion in the 35 percent requirement are referred to in this Treasury Decision as "substantially transformed constituent materials."

The following examples, which assume direct shipment from the beneficiary developing country to the United States, show the application of these rules:

Example No. 1. A product has an appraised value of $100. The composition of the product includes $20 of materials produced in the beneficiary developing country and the direct costs of processing operations amount to $20. Since the materials produced in the beneficiary developing country plus the direct costs of processing operations exceed 35 percent of the appraised value, the product qualifies for duty-free treatment.

Example No. 2. The product has an appraised value of $100. Materials valued at $20 are imported into the beneficiary developing country where they are substantially transformed into a new and different article. The value of the new article is $30. This new article then becomes a constituent element of the eligible article which is exported to the U.S. The direct costs of processing operations performed on the new article in order to manufacture it into the eligible article are $10. The value of the substantially transformed constituent material, $30, plus the direct costs of processing, $10, exceed 35 percent of the appraised value of the eligible article. Hence, the eligible article qualifies for duty-free treatment.

Example No. 3. The product has an appraised value of $100. Materials valued at $20 are imported into the beneficiary developing country where they are manufactured directly into an article which is exported to the U.S. The direct costs of processing operations amount to $30. The materials processed into the finished article are not themselves produced in the beneficiary developing country. Therefore the value of those materials cannot be added to the direct costs for processing operations to make up the 35 percent requirement.

Generally, foods that are undefined in final dimensions and shapes are considered materials, while goods that have been processed into a completed device or contrivance ready for ultimate use are not considered materials. For example, raw skins imported into a beneficiary developing country and tanned into leather could be a substantially transformed constituent material when used in the subsequent manufacture of a leather coat. Similarly, materials processed into certain articles may be considered substantially transformed constituent materials. For example, gold bars which are imported into a beneficiary developing country are cast into mountings—rings in which a stone is not yet set. Such mountings are substantially transformed constituent materials of the eligible articles of jewelry when those mounting be-

come constituent elements of a ring mounted with a precious stone of the beneficiary developing country and then exported directly from that beneficiary developing country.

Articles produced by the joining and fitting together of components are not considered substantially transformed constituent materials. Articles of this kind may well have been substantially transformed, but they are not produced from substantially transformed constituent materials. Under this criterion, partially completed components which are completed and assembled in the beneficiary developing country into finished articles or components do not qualify as substantially transformed constituent materials. By the same token, most assembly operations and operations incidental to assembly will not qualify. For example, various electronic components and a bare but otherwise finished circuit board are imported into a beneficiary developing country and there assembled by soldering into an assembled circuit board for a computer. Although substantially transformed, the fabricated unit is not a substantially transformed constituent material of the computer, the exported eligible article produced in the beneficiary developing country.

Further questions concerning the interpretation of the term "materials" for GSP purposes may be submitted in accordance with Part 177 of the Customs Regulations (19 CFR Part 177). (043986)

(CLA-2:R:CV:S)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

[Published in the FEDERAL REGISTER April 6, 1976 (41 FR 14547)]

SPECIAL NOTICE

The Third Judicial Conference of the U.S. Court of Customs and Patent Appeals will be held at the Sheraton-Park Hotel in Washington on May 10, 1976. The Conference will be composed of the Chief Judge and the Associate Judges of the CCPA and of the U.S. Customs Court, members of each of the Patent and Trademark Boards of Appeal, members of the International Trade Commission, officials of the Treasury and Justice Department and the U.S. Customs Service, and invited members of the Bar.

The Chief Justice of the United States has expressed his intent to attend the Conference again this year.

Lawrence E. Walsh, President, American Bar Association, will be our Luncheon Speaker.

The program for the Conference is devoted to coming events and their effect on practice in the fields of law involved. Specific topics include the CCPA annual report, proposed Rule changes, additional law work involving the International Trade Commission, how to win an appeal, and improvements in the jurisdiction of the Customs Court. This year an extended opportunity will be provided for your questioning of panel members.

Registration forms are available in the Clerk's Office, 717 Madison Place, N.W., Washington, D.C. 20439, 202–347–1552.

203–453—76——3

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4640)

INTERNATIONAL FASHIONS *v.* UNITED STATES

Ladies' knitwear

EXPORT VALUE—INSPECTION COMMISSION—SEPARABILITY PRECLUDED

Ladies' acrylic knitted sweaters and boucle capes exported from Hong Hong in August, 1971, were appraised on the basis of export value as defined in 19 U.S.C.A. § 1401a(b) at invoiced unit values plus 5%, and the importer contends that the proper export values are represented by the invoiced unit values.

Evidence in the record shows that although the appraiser accepted the invoice unit prices as his starting point in making the

appraisement he added 5% to reflect what a customs agency report indicated was an additional 5% paid as an inspection fee but not shown in the invoices. Testimony given by the importer's owner and president indicated that the 5% was paid for inspection services performed by the manufacturer's managing director before the merchandise was in a condition, packed ready for exportation to the United States. And the only evidence relating to sales or offers concerning merchandise other than that imported herein is a statement in the affidavit of the manufacturer's said managing director to the effect that during 1971 prices charged by the factory were the same for comparable merchandise to all importers who purchased from the factory.

Held, application of the separability principle is precluded because there is no evidence that the prerequisite sales or offers of such merchandise were made for exportation to the United States at the claimed invoice unit prices.

Court No. 74-10-02730

Port of Los Angeles

[Dismissed.]

(Decided March 17, 1976)

Glad, Tuttle & White (*Edward N. Glad* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Velta A. Melnbrencis*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise in this case consists of ladies' acrylic knitted sweaters and boucle capes which were manufactured in Hong Kong, exported therefrom in August, 1971, and entered at the port of Los Angeles, California. In issue here is the proper appraised export value as that value is defined in 19 U.S.C.A., section 1401a(b)* (section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956).

Plaintiff contends in this action that the proper export values are the f.o.b. invoice unit values, net packed, without the addition of 5 per cent as reflected in the appraiser's return of value. The record shows that the 5 per cent was added in the appraisement upon the advice of a customs agency report which indicated that there was an

*Section 1401a(b) states:

For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

additional 5 per cent paid as an inspection fee that was not shown in the invoices. But it appears that the appraiser did accept the invoice unit values as the starting point in making the appraisement in issue.

Plaintiff acknowledges the payment of an additional 5 per cent in connection with the purchase and exportation of the involved merchandise, but alleges that the payment represents a commission that was paid for an inspection performed after the merchandise was in a condition packed ready for shipment to the United States [complaint, paragraph 7]. However, the evidence in the case, while it indicates that the disputed payment was initiated by the plaintiff, also indicates that the payment was for inspection services performed before the merchandise was in a condition packed ready for exportation to the United States.

The services for which the 5 per cent payment was made was described in the testimony of William Feldstein, Jr., plaintiff's owner and president since 1967. Mr. Feldstein testified on direct examination (R. 21–23):

> Q. I would like to refer you to the entries in this particular case and ask you if you are familiar with these importations?—A. I am.
>
> Q. How are you familiar with these importations?—A. They pertain to merchandise which I ordered and also pertain to order numbers which belong to my firm and relative letters of credit issued and guaranteed by me individually.
>
> Q. From what manufacturer were these items of wearing apparel purchased?—A. Sincere's Knitting Factory.
>
> Q. Did you have anybody making 100 percent inspection of these garments?—A. Yes.
>
> Q. Whom did you have make 100 percent inspection of these garments?—A. A gentleman by the name of Mr. James Cheung.
>
> Q. What arrangement did you have with Mr. James Cheung?—A. My arrangement with Mr. James Cheung was as follows: after I ordered the merchandise I asked him to inspect all of my yarns to make sure that I was not receiving uneven yarn from the finisher who I contracted for the yarn. After the pieces were knitted I asked that he inspect all the knitted bundles to make sure that the amount of yarn that was sent to the knitters came back into the knitted piece and that I was receiving precisely what I wanted. After that he snpervised a team of people to inspect all the knitted pieces to make sure that the various sizes and specifications that I had required were proper prior to the time the garments were finished. And in conclusion, or at the conclusion of these particular orders he would, not "would," but he did inspect the merchandise in its entirety.

Q. How did you pay for this merchandise?—A. I paid for the merchandise through letter of credit.

And it was also brought out in the direct testimony of the witness that the letters of credit issued to Sincere's Knitting Factory and received in evidence as collective exhibit 1 were required to be cashed, among other things, against an inspection certificate signed by Mr. Cheung.

Payment for the inspection services was made separate and apart from payment for the merchandise *per se*. In this connection the affidavit of James Cheung, managing director of Sincere's Knitting Factory, Kowloon, Hong Kong, dated March 13, 1975, and received in evidence as exhibit 2, states:

> That my firm was paid by Letters of Credit made out to Sincere's Knitting Factory for the merchandise it sold to International Fashions. However, the payment to me of the 5% commission for the 100% inspection was made by checks in response to separate debit notes which I submitted every six to nine months to International Fashion, a photostatic copy of my last debit note to International Fashion with the check received by me in payment, along with the receipt, are attached hereto. I only did this 100% inspection for International Fashion.
>
> That I never considered the 5% commission payments from International Fashion as part of Sincere's Knitting Factory's profit. These payments were never made a part of Sincere's Knitting Factory's record. These payments were used by me to pay the persons that I had to hire to do this 100% inspection. In addition, I and not the factory signed the inspection certificates.

The Cheung affidavit also avers, among other things, that the factory employed around 250 workers and sold to buyers in the United States, Canada, Australia, and Europe, and that during 1971 prices charged by the factory were the same for comparable merchandise to all importers who purchased from the factory.

In its brief plaintiff argues that the appraisement is separable so as to permit challenge of only the inspection fee; and that since this fee is in the nature of a buying commission, it is not part of the dutiable value. Defendant argues that the appraisement is not separable, but that even it if is separable the separability doctrine is not available since plaintiff failed to prove that the merchandise was freely sold or offered for sale to all purchasers for exportation to the United States at prices which did not include the disputed fee. Defendant also argues that plaintiff failed to establish that the disputed charge is not part of the price of the merchandise.

Although the doctrine of separability extends to cases such as that at bar where the appraisement involves an f.o.b. price rather than an

ex-factory price, see *United States* v. *Knit Wits (Wiley) et al.*, 62 Cust. Ct. 1008, A.R.D. 251, 296 F. Supp. 949 (1969), the application of the doctrine is conditioned upon a showing that the merchandise is freely sold or offered for sale to all purchasers for exportation to the United States at a price which does not include the disputed item or items. *United States* v. *Pan American Import Corp. et al.*, 57 CCPA 134 C.A.D. 993, 428 F.2d 848 (1970). Bearing in mind that the imported merchandise in this case involves "quality controlled" knitwear, the only evidence in the record as to prices for merchandise other than that imported herein is the aforementioned statement in the Cheung affidavit. And the court agrees with defendant that this statement does not constitute evidence of statutory export value equal to invoice unit prices which do not include inspection charges, or without a separate payment for inspection charges.

In fact, if the term "comparable merchandise" in the Cheung affidavit can be said to be the equivalent of the quality controlled knitwear involved in this case, it would appear, according to the Cheung affidavit, that other sales of such merchandise involved an additional inspection charge. In this connection the Cheung affidavit states:

> That Sincere's Knitting Factory had its own inspectors in the packing and finishing department who would random inspect the merchandise being shipped to all of its customers, including International Fashions. But then I would have these six to twelve persons do the 100% inspection which is *similar to the inspection that the agents of my other customers would do.* [Emphasis added.]

And again the Cheung affidavit states:

> That when these inspectors [the Cheung appointed inspectors] found any defects in the merchandise, they would return the defective garment to the factory to either be fixed or replaced *in the same manner that agents for our other customers would do.* [Emphasis added.]

Hence, under the circumstances disclosed in this case, the absence of evidence of other sales or offers of such merchandise, i.e., "quality controlled" knitwear, at prices other than the appraised values, bars application of the separability principle here.

Moreover, even if plaintiff had established the requisiste export sales or offers, paving the way for application of the separability principle in this case, the testimony of the witness Feldstein noted hereinbefore would preclude any treatment of the disputed charge, irrespective of to whom paid, as nondutiable. Section 1401a(b) plainly includes expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States, when not

included in the price *per se*. And the services outlined in the Feldstein testimony for which the disputed charge was incurred clearly fall within this category. As such, the court would be obliged in any event to sustain defendant's alternative argument, to wit, that plaintiff has failed to establish the non-dutiability of the charge.

Nor is plaintiff's case saved by calling the charge in question a buying commission as counsel seem inclined to do in their brief. Apart from the fact that plaintiff's posture in its pleading precludes designation of the disputed item as anything but an inspection commission, a buying commission is different from, and, therefore, incompatible with the charge under consideration in this case. A buying commission is associated with and affects the *manner* in which foreign merchandise is purchased for exportation, whereas the inspection commission at bar is associated with and affects the *nature* of the foreign merchandise which is purchased for exportation, i.e., the presence or absence of the charge determines whether the foreign merchandise is "quality controlled" merchandise, or whether it is non-quality controlled merchandise.

For the reasons stated plaintiff has failed to sustain the issuable allegations of the complaint. Accordingly, the court finds as facts:

1. That the merchandise in this action consists of "quality controlled" ladies' acrylic knitted sweaters and boucle capes manufactured in Hong Kong by Sincere's Knitting Factory and exported therefrom in August, 1971.

2. That said merchandise was appraised upon entry at the port of Los Angeles, California, on the basis of export value as defined in 19 U.S.C.A., section 1401a(b) (section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956) at the invoiced f.o.b. unit prices plus 5 per cent.

3. That there is no evidence in the record that at the time of exportation of said merchandise such or similar merchandise was freely sold or, in the absence of sales, offered for sale to all purchasers in the principal markets of Hong Kong in the usual wholesale quantities for exportation to the United States at the invoiced f.o.b. unit prices.

Upon these facts the court concludes as matters of law:

1. That export value as defined in 19 U.S.C.A., section 1401a(b) (section 402(b), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956) is the proper basis for determination of the value of the merchandise herein.

2. That plaintiff has not established an export value different from that returned in the appraisement of said merchandise.

3. That the appraised values of said merchandise remain in full force and effect by reason of plaintiff's failure to overcome the presumption of correctness attaching to the appraisement.

Judgment will be entered herein accordingly.

(C.D. 4641)

DAVID E. PORTER *v.* UNITED STATES

Gloves

Motocross gloves, imported from Sweden and West Germany, were classified as leather, seamed, unlined men's gloves, not seamed wholly or in part by hand, valued over $20 per dozen pairs, under item 705.50 of the tariff schedules, dutiable at the rate of 25 per centum ad valorem. Plaintiff contested the classification, and claimed that the gloves had been specially designed for use in sports, and, therefore, were dutiable at only 9 per centum ad valorem under item 735.05. *Held:* Since plaintiff succeeded in proving that the gloves at bar were "specially designed for use in sports," specifically the sport of motocross, they are excluded from classification under item 705.50 of the tariff schedules by virtue of schedule 7, part 1, subpart C, headnote 1(a). Hence, plaintiff's protests were sustained.

SPORT—GLOVES SPECIALLY DESIGNED FOR USE IN SPORTS

Motocross was described as a sport wherein as many as 30 riders race competitively on a closed 1½- to 2-mile circuit dirt track over rough terrain for 30 to 40 minutes, requiring a special motocross motorcycle and protective clothing including gloves to protect their hands. That the gloves at bar were specially designed for use in the sport of motocross was made evident by their special features or characteristics such as a shortened palm, a reinforced thumb, an elastic band around the wrist, protective strips or ribbing on the top or back of the fingers and knuckles, and an out-seam construction, all of which make the gloves specially suitable for that sport. The fact they might be used on other occasions does not change their customs classification status as "gloves * * * specially designed for use in sports." See *Stonewall Trading Co.* v. *United States*, 64 Cust. Ct. 482, C.D. 4023, 313 F. Supp. 410 (1970). The fact that an article is "specially constructed for a particular purpose means merely that it includes particular features which adapt it for that purpose," *Plus Computing Machines, Inc.* v. *United States*, 44 CCPA 160, C.A.D. 655 (1957).

EVIDENCE—SURVEYS

Objections pertaining to the unscientific and unreliable manner in which surveys are prepared and conducted affect only the weight, rather than the admissibility of such surveys as evidence. *General Motors Corp.* v. *Cadillac Marine & Boat Co.*, 226 F. Supp. 716 (W.D.S.D. Mich. 1964). In the present case, surveys, conducted

merely be asking distributors and riders their opinions whether motocross gloves were used in competition, were not entitled to probative value. A "sport" need not necessarily involve competition. See *Stonewall Trading Co.* v. *United States, supra.*

Court No. 72–1–00129

Port of San Diego

[Judgment for plaintiff.]

(Decided March 17, 1976)

Stein & Shostak (*S. Richard Shostak* of counsel) for the plaintiff.

Rex E. Lee, Assistant Attorney General (*Frank J. Desiderio* and *Joseph R. Borich,* trial attorneys), for the defendant.

RE, Judge: The question presented in this case pertains to the proper classification, for customs duty purposes, of certain motorcycle gloves imported by plaintiff from Sweden and West Germany. The gloves were classified by the Customs officials as leather, seamed, unlined men's gloves, not seamed wholly or in part by hand, valued over $20 per dozen pairs, under item 705.50 of the Tariff Schedules of the United States (TSUS). They were therefore assessed with duty at the rate of 25 per centum ad valorem.

Plaintiff protests the classification, and claims that the motorcycle gloves were specially designed for use in the sport of motocross, and, therefore, are properly dutiable at only 9 per centum ad valorem under item 735.05 of the tariff schedules, as modified by T.D. 68–9, which provides for gloves "specially designed for use in sports." Plaintiff contends that since the gloves were "specially designed for use in sports," specifically the sport of motocross or motocross racing, they are excluded from classification under item 705.50 of the tariff schedules by virtue of schedule 7, part 1, subpart C, headnote 1(a).

Schedule 7, part 1, subpart C, item 705.50, TSUS, pursuant to which the merchandise was classified, provides as follows:

"Subpart C. – Gloves

Subpart C headnotes:

1. For the purposes of this subpart—
(a) the term 'gloves' includes all gloves and mittens designed for human wear, except boxing gloves, golf gloves, baseball gloves, and other gloves specially designed for use in sports; * * *

* * * * * * *

Gloves of leather except gloves in item 705.35:

* * * * * * *

Seamed:

Men's not lined:

* * * * * * *

Not seamed wholly or in part by hand:

* * * * * * *

705.50 Valued over $20 per dozen pairs..... 25% ad val."

Plaintiff claims that the merchandise should have been classified under item 735.05, TSUS, as modified by T.D. 68–9, under schedule 7, part 5, subpart D, which provides:

"Subpart D. – Games and Sporting Goods

Subpart D headnotes:

1. This subpart covers equipment designed for indoor or outdoor games, sports, gymnastics, or athletics, but does not cover—

* * * * * * *

(v) other wearing apparel, other than specially designed protective articles such as, but not limited to, gloves, shoulder pads, leg guards and chest protectors;

* * * * * * * *

735.05 Boxing gloves, and other gloves, not provided for in the foregoing provisions of this subpart, specially designed for use in sports..... 9% ad val."

The record consists of the testimony of eight witnesses, four called by plaintiff, and four for defendant. It also contains fourteen exhibits, ten introduced by plaintiff and four by defendant. Since the case was tried with commendable competence, it reveals a clear picture of the nature of the imported merchandise, and the various aspects of the sport of motocross.

Defendant, in its post-trial brief, states that the question presented is "[w]hether the gloves at bar were specially designed for use in the sport of motocross racing." It takes the position "that while motocross racing is a sport * * * motorcycling in general is not a sport," and "that the so-called 'motocross' gloves were designed for the use of all motorcycle riders, are marketed as such to the general motorcycle public, and are used as such."

Plaintiff phrases the question presented in the statutory language of the tariff provisions, and states that the issue is: "Whether the gloves at bar, having features not found in ordinary gloves, are specially designed for use in sports, and are thereby excluded from classification under Item 705.50 in Schedule 7, Part 1, Subpart C, by headnote 1(a) thereof, and are classifiable in Schedule 7, Part 5, Subpart D, as other gloves, specially designed for use in sports, under Item 735.05, as claimed by plaintiff."

Plaintiff has introduced testimony to show that the gloves were specially designed for the sport of motocross, and were in fact so marketed and used. It contends that the special characteristics or features incorporated into the gloves show clearly that they were specially designed for the sport of motocross. Hence, they fully satisfy the statutory requirements for classification under item 735.05.

Defendant, on the other hand, asserts that the safety features of the gloves simply make them suitable for use in motorcycle transportation in general, and that the gloves are marketed "to the general motorcycle public."

That motocross racing is a sport has been stipulated. The evidence reveals that, although recently introduced from Europe, the sport has been widely accepted, and is generating a great deal of interest in the United States. Mr. Lars Larsson, plaintiff's first witness, and a professional motocross racer, testified that he emigrated to the United States from Sweden in 1967 to promote the sport of motocross. He became vice president of a company which imports motocross equipment into the United States.

Mr. Larsson described motocross as a sport wherein as many as 30 riders race competitively on a closed 1½- to 2-mile circuit dirt track over rough terrain for 30 to 40 minutes. His testimony fully described the sport, and the equipment and clothing that is either required or necessary in order to participate with relative safety and comfort. Additionally, his testimony indicates that the motocross gloves are used in related sports called "trial," "speedway" or "enduro" racing.

The cross-examination of Mr. Larsson was helpful and enlightening. It was shown that there are internationally accepted rules for motocross racing, and it was stipulated that the American Motorcycle Association Motocross Competition Rule Book specifically requires certain protective clothing and equipment. The parties agreed that the rules "specifically provide for helmets, goggles and boots," and that "clothing is defined with respect to its material but not with respect to any particular item." Mr. Larsson testified that before entering a race "they have a technical inspection of you and the motorcycle." He stated that for the "technical inspection * * * [y]ou have to show them that you have your helmet, goggles, gloves, pants and

leather boots, and a jersey." In answer to specific questions by counsel for defendant, Mr. Larsson testified that the inspection includes the wearing of gloves, and that the gloves in issue are "one type" that would comply with the requirement for gloves.

The motocross racing track is a dirt road course. As described by Mr. Larsson, "[i]t goes over hills – down hills – over rocks – water crossing – off camber corners * * *." The testimony revealed that it is precisely this rough terrain which requires that the motocross rider wear special protective clothing. As the sport increases in popularity, there is a greater demand for motocross bikes, equipment, and accessories, such as plaintiff's motocross gloves. All of plaintiff's witnesses testified that the gloves in issue were specially designed to meet that demand, and protect the hands of the motocross racer on the dirt track.

It is pertinent to note that the motocross or "dirt" motorcycle differs from the motorcycle suitable for lawful or safe "street" use in the following essential respects:

(a) it has a narrower frame;
(b) it has a greater ground clearance;
(c) it has "knobby" tires which cannot be used on paved roads;
(d) it lacks the necessary electrical lighting equipment; and
(e) it is lighter than the "street" motorcycle in that it weighs only 220 pounds instead of 400 to 500 pounds.

Mr. Larsson testified that he has advised designers of motocross gloves on the special features that motocross racers require in a glove that will protect their hands. Commenting on the elastic band around the wrist of the glove, Mr. Larsson stated that this feature was essential "to protect you from mud and water to get into your hand, and sand, because if you did get any of this in your hand, that would be just about the end of it because it would immediately tear your hands up."

Mr. Richard Miller, plaintiff's second witness, was editor of a motocross competition periodical entitled, "Motocross Action Magazine." Since the magazine was dedicated to motocross racing, and other dirt competition, it often contained motocross glove advertisements. Having raced in competition, and having sold motocross accessories, such as motocross gloves, Mr. Miller was qualified to speak on the special equipment that is either required or necessary in the pursuit of the sport of motocross.

Plaintiff's third witness, Mr. M. Edison Dye, imports, manufactures, and distributes motocross motorcycles and accessories. He has sponsored motocross races, and has also assisted in the design of motocross gloves. Mr. Dye testified that, in his opinion, the motocross gloves which he imports are used only in motocross racing.

Plaintiff's final witness, Mr. Robert Maynard, a motocross racer and motorcycle dealer, testified that the motocross glove "protects you from branches and sticks * * * [and] rocks flying off a competitor's motorcycle. It saves some pretty painful injuries."

Defendant's witnesses entered the field of motocross only recently. They are not expert motocross riders, and lack the expertise of plaintiff's witnesses. Mr. Robert Huff, manager of technical development for a company which manufactures and sells gloves and protective clothing, identified defendant's exhibit B as a motocross glove he helped to design. Mr. Huff testified that the glove, though marketed as a motocross glove, was not designed for use in sports but for motorcycle riding in general. Admittedly, this glove was a later copy inspired by plaintiff's gloves. This does not disprove the fact that plaintiff's motocross gloves were specially designed for motocross racing, and are marketed and used in the sport of motocross.

A witness for the defendant testified that he observed motorcyclists wearing motocross gloves for highway use. The testimony, however, indicates that, although motocross gloves may increase protection in ordinary motorcycle riding, the street or highway rider would find plaintiff's gloves uncomfortable. For example, Mr. Robert Maynard, an expert witness for plaintiff, testified that the motocross glove "offers absolutely no protection from the cold." Distinguishing between motocross gloves, and "street" gloves used by motorcyclists in general, Mr. Maynard stated that the motocross gloves lack both "padding in them to keep your hands warm," and a "gauntlet to keep the wind from going up your sleeves."

All of the witnesses for plaintiff were familiar with the design, importation, sale and use of the gloves in issue. Additionally, they were exceptionally well qualified to testify on all phases of the sport of motocross, and the equipment and accessories necessary for the sport. Their testimony was candid and reliable, and clearly inspired confidence. As pioneers who introduced the sport into the United States, successful and winning riders, sponsors of motocross races, and writers for magazines having a world-wide circulation for motocross enthusiasts, their testimony "is of high probative value." *Davis Products, Inc., Frank M. Chichester* v. *United States*, 59 Cust. Ct. 226, C.D. 3127 (1967). It clearly establishes that the gloves in issue were specially designed for, and used by, motocross riders engaged in the sport of motocross.

On the crucial issue whether the gloves were specially designed for the sport of motocross, as claimed by plaintiff, or "the general motorcycle public," as is urged by the defendant, the court finds for the plaintiff. This finding is based upon an examination of the gloves

themselves, the exhibits, and the unquestioned reliability of the testimony of all of plaintiff's witnesses.

In customs classification cases it is well established that whether an article is "specially designed" or "specially constructed" for a particular purpose may be determined by an examination of the article itself, its capabilities, and its actual use or uses. See cases cited in *Sports Industries, Inc.* v. *United States*, 65 Cust. Ct. 470, C.D. 4125 (1970). It is equally clear that a sample of the merchandise is a potent witness. *United States* v. *The Halle Bros. Co.*, 20 CCPA 219, T.D. 45995 (1932); *United States* v. *Fred. Gretsch Mfg. Co., Inc.*, 28 CCPA 26, C.A.D. 120 (1940).

On the present record the evidence is overwhelming that the gloves were specially designed, sold and used for the sport of motocross. The special features incorporated in the motocross gloves not only confirm that they were specially designed for motocross, but also distinguish them from other motorcycle gloves designed for "street riding." It cannot be disputed that the motocross gloves contain the following special features or characteristics:

(a) a shortened palm facilitating a smooth grip of the handle bars in order to avoid blisters;
(b) a reinforced thumb to protect against the rigid edge of the handlebar grips;
(c) an elastic band around the wrist to prevent sand, gravel and the like, from entering the glove;
(d) protective strips or ribbing on the top or back of the fingers and knuckles which act as bumpers;
(e) an out-seam construction to prevent blisters.

The incorporation of these special features into the gloves clearly increase the cost of manufacture. The higher price to consumers would discourage those who could purchase a less expensive glove that would be suitable for motorcycle transportation. Purchasers, however, who ride on rough terrain, and need the added protection, pay a higher price for plaintiff's gloves because of their special features.

By means of "surveys," two of defendant's witnesses attempted to show that motocross gloves were used chiefly for recreational purposes or street riding, and not in competition. These "surveys" were conducted by telephone calls and visits to trade shows and distributors. Mr. J. Terry Cochran, director of marketing and national sales manager for a company which manufactures gloves and protective clothing, testified that his "[survey] findings were 30 per cent competition and 70 per cent non-competition." Mr. Robert Denman, a manufacturers' representative, testified that his "overall calculation was that 27 per cent of [motocross] gloves were used in competition and 73 per cent in non-competition or other use."

Since the case of *United States* v. *88 Cases, More or Less, Containing Bireley's Orange Beverage*, 187 F. 2d 967 (3d Cir. 1951), federal courts have admitted the results of surveys despite their heresay character. Objections which pertain to the unscientific and unreliable manner in which a survey is prepared and conducted affect only the weight, rather than the admissibility of the evidence. *General Motors Corp.* v. *Cadillac Marine & Boat Co.*, 226 F. Supp. 716, 734 (W.D.S.D. Mich. 1964). A statement of the court in the *General Motors* case, that there "are many signs that the survey was a great deal less than scientifically prepared," is equally applicable here. 226 F. Supp. at 738.

The results of defendant's surveys, conducted merely by asking distributors and riders their opinions whether motocross gloves were "used in competition," are not entitled to probative value for a variety of reasons. To mention some: (1) the responses were percentage estimates often obtained without consultation of sales records; (2) these estimates were furnished by individuals whose source of knowledge was never established; (3) no definition of terms such as "competition" was used in the surveys, and one can only guess what was in the mind of the person questioned; and (4) the data from which the results were derived is unavailable, and cannot be examined or verified.

The surveys were limited to a "competitive-noncompetitive" use comparison. Viewed in the most favorable light they inquired about the use of gloves in "competition," and not whether they were used in sports. Furthermore, since defendant's witnesses appear to have too restrictive a view of "sports," limiting them exclusively to competitive sports, the results of their surveys are unreliable if not misleading.

That a sport need not necessarily involve "competition" can be gleaned from recent cases decided by this court. In *Stonewall Trading Co.* v. *United States*, 64 Cust. Ct. 482, C.D. 4023, 313 F. Supp. 410 (1970), ski gloves, specially designed for the sport of skiing, were properly dutiable under the tariff provision which covered "ski equipment." Although skiing does not necessarily involve competition, at no time was it suggested it was not a sport. Relying upon the reasoning of *American Astral Corporation* v. *United States*, 62 Cust. Ct. 563, C.D. 3827, 300 F. Supp. 658 (1969), the court stated:

> "In the words of Judge Maletz in the *American Astral Corporation* case, the statutory designation of 'equipment' is 'satisfied once it is shown that the article is specially designed for use in the game or sport.' On the question of special design, notwithstanding defendant's efforts to minimize the importance of the special features of the gloves, plaintiff's case is unassailable." 64 Cust. Ct. at 489.

In *Sports Industries, Inc.* v. *United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), underwater divers' gloves were held to be gloves specially designed for use in sports within item 735.05, the tariff item under which plaintiff claims classification for the motocross gloves. Much that is written in the *Sports Industries* decision is applicable to the case at bar. There, because of the evidence of the physical characteristics of the gloves, the court held that they were specially designed for the sport of underwater swimming, skin diving or scuba diving.

In the decided cases, the gloves were held to be sports gloves because their special features, characteristics and construction revealed that they were "gloves * * * specially designed for use in sports." The following quotation from the *Sports Industries* case is particularly pertinent:

> "* * * the divers gloves in issue possess special features which clearly indicate that they were 'specially designed' for use in the sport of underwater swimming. If the tariff schedules were to contain a pertinent provision for underwater swimming equipment, it would seem clear that, under the applicable authorities, the gloves in issue would qualify as 'equipment'. There is, however, no specific provision which covers underwater swimming 'equipment'. Nevertheless, there would seem to be no question that underwater swimming, pursued solely for personal pleasure, and not commercially or for compensation, is a 'sport'. Under the circumstances, therefore, the gloves are classifiable under item 735.05 of the tariff schedules which covers 'gloves * * * specially designed for use in sports'." 65 Cust. Ct. at 474.

What is said of underwater swimming and divers' gloves in the *Sports Industries* case is equally applicable to the sport of motocross, which requires a special motorcycle, special equipment, and special accessories.

The solitary "dirt" rider on a motocross motorcycle who seeks the challenge of a rough terrain also engages in a sport as does the underwater swimmer and the skier. Equally important is the fact that such a rider requires the protection of motocross gloves quite as much as the rider who participates in an organized competition.

Also pertinent is the statement in the Summaries of Trade and Tariff Information, Schedule 7, Volume 4 (1968) at page 153 which includes "special bicycling gloves" as merchandise classifiable under item 735.05. In its brief, plaintiff comments that the inclusion of "special bicycling gloves" within item 735.05 "is particularly significant because if bicycling is deemed to be a sport for the purposes of item 735.05, then certainly off-the-road cycling, with or without competition would also qualify."

In support of its position that "motocross gloves" were not specially designed for motocross, defendant, in its post-trial brief, stated that "[t]he term 'motocross gloves' is merely a 'generic term' in the trade, indicating that the manufacturer tried to sell them to motocross riders among other motorcyclists." Not only is there no support in the record for defendant's assertion, but it also attributes to plaintiff the poor sales policy of giving his product a limiting name which would restrict its market.

In furtherance of its contention that the motocross gloves "were specially designed for use of all motorcyclists," a witness for defendant testified that he saw motocross gloves used by motorcyclists not engaged in sport. This, however, does not change the customs classification status of "gloves * * * specially designed for use in sports." As stated in the *Stonewall Trading* case, "[t]he fact that the gloves may be used on [other] occasions * * * does not warrant a different result." 64 Cust. Ct. at 490. This point had been previously decided by the Court of Customs and Patent Appeals in the case of *Plus Computing Machines, Inc.* v. *United States*, 44 CCPA 160, C.A.D. 655 (1957) which teaches that the fact that an article is "specially constructed for a particular purpose means merely that it includes particular features which adapt it for that purpose." Significantly, the appellate court added that "[t]he purpose in question need not be the sole one served by the article and may not even be the principal one." 44 CCPA at 167.

The reasoning of the decided cases shows that since the court has determined that the motocross gloves were specially designed for use in the sport of motocross, they are classifiable as claimed even though they were not used exclusively for the sport of motocross.

In customs classification cases it is axiomatic that, in order to prevail, the contestant must bear a dual burden of proof. Plaintiff must prove that the customs classification of the merchandise is erroneous, and that the claimed classification is correct. In the present case it is the determination of the court that plaintiff has succeeded in bearing his dual burden, and that the presumption that attaches to the correctness of the classification of the Customs officials has been overcome.

Since the motocross gloves at bar were "specially designed for use in sports," they are excluded from classification under item 705.50 of the tariff schedules, and are properly classifiable under item 735.05.

The protests are sustained, and judgment will issue accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *March 22, 1976.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P76/56	Richardson, J. March 16, 1976	Litton Systems, Inc.	73-9-02714	Item 685.20 6% without allowance under item 807.00	Items 685.20/ 807.00 6%; cost or value of U.S. fabricated	General Instrument Corporation v. U.S. (C.A.D. 1128)	Nogales American goods returned; yokes; magnetic and lead copper wires

					components marked "A" (magnetic and lead copper wires) deductible from full value of imported yokes in which they were assembled		
P76/57	Maletz, J. March 16, 1976	Mego Corp.	67/71390, etc.	Item 737.90 35% or 31%	Item 734.20 11.5% or 9%	Mego Corp. v U.S. (C.A.D. 1137)	New York Bagatelle, pinball games, etc.
P76/58	Maletz, J. March 16, 1976	Mego Corp.	73-3-00792, etc.	Item 737.90 28%, 24%, 21% and 17.5%	Item 734.20 8%, 7%, 6% and 5.5%	Mego Corp. v. U.S. (C.A.D. 1137)	New York Pinball, bagatelle, basketelle games, etc.

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R76/43	Richardson, J. March 16, 1976	F & D Trading Corp.	R61/23713, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (in Deutsch Marks)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Baltimore Various model Volkswagen automobiles

R76/44	Richardson, J. March 16, 1976	Great Empire Corp.	R66/5287, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (all in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R76/45	Richardson, J. March 16, 1976	Great Empire Corp.	R68/5340, etc.	Cost of production	Appropriate value listed on schedule, attached to decision and judgment, in column designated "Claimed Values (in Deutsch Mark)" for each automobile model	U.S. v. F & D Trading Corp. (C.A.D. 1089)	New York Various model Volkswagen automobiles
R76/46	Richardson, J. March 16, 1976	Usico Imports, Inc.	R66/1667, etc.	Cost of production	Value specified on schedule, attached to decision and judgment, in column designated "Claimed Value" for each automobile	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Houston Volkswagen automobiles

Judgment of the United States Customs Court in Appealed Case

MARCH 16, 1976

APPEAL 75-21.—United States *v.* Naftone, Inc.—CHEMICALS—PLASTICS MATERIALS—CEMENT—TSUS.—C.D. 4578 affirmed January 29, 1976. C.A.D. 1166.

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